

## **REMARKS**

### **I. Status of the Claims**

Claims 1 and 2 have been cancelled without prejudice or disclaimer.

Claims 3-9 have been amended without prejudice or disclaimer. Claims 10-18 have been added. Support for the amendments and the new claims is found throughout the specification, e.g., at page 4, lines 8-17 of the English translation of the specification that was filed on January 10, 2006 (discussing giving body to or enhancing the body of a food or beverage); page 6, lines 20-24 of the English translation; and the claims as originally filed.

By this Amendment, no new matter has been added to the application.

Upon entry of this Amendment, claims 3-18 are pending.

### **II. Claim Objections**

Claim 5 has been amended as requested by the Examiner, to delete the comma previously appearing between the words “ginger” and “oleoresin.” Withdrawal of the objection is requested.

### **III. Claim Rejections Under 35 U.S.C. §102.**

The Examiner has rejected claims 1-9 as anticipated by each of Ishida et al., US 2002/0013235 A1 (“Ishida”) and Kumamoto et al., US 2002/0119231 A1 (“Kumamoto”). In response, without conceding the validity of the rejections, claims 1 and 2 have been cancelled and claims 3-9 have been amended, without prejudice or disclaimer. Claims 10-18 have been added. Neither Ishida nor Kumamoto anticipates any of the pending claims.

Anticipation requires that each limitation set out in a claim be set forth in a single reference. It is not sufficient, however, that the reference merely mentions the limitations. The limitations must be “arranged as in the claim.” *Ecolchem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000); *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1370 (Fed. Cir. 2008). The court in *Net Money* stated:

Because the hallmark of anticipation is prior invention, the prior art reference – in order to anticipate under 35 U.S.C. §102 – must not

only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’

*Id.* at 1369. (internal citation omitted). *See also Ecolochem* at 1371 (anticipation requires “all of the limitations arranged or combined in the same way as recited in the claim”) and *In re Arkley*, 455 F.2d 586 (CCPA 1972) (“The prior art reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.”).

Neither of Ishida or Kumamoto anticipates the subsisting claims because neither Ishida nor Kumamoto sets out the claim elements “arranged as in the claim.” Claim 3 is the sole independent claim in the application. Claim 3 is directed to a body enhancer of a food or beverage comprising (1) a vanillyl alcohol of Formula (I); (2) at least one of a salty seasoning or umami seasoning; and (3) a flavor and/or spice. Neither Ishida nor Kumamoto discloses any composition comprising a vanillyl alcohol of Formula (I), at least one of a salty seasoning or umami seasoning; and a flavor and/or spice. The Examiner refers to passages in of Ishida and Kumamoto that she purports discloses elements of the claims. The passages referred to by the Examiner, however, cannot support a finding that either of Ishida or Kumamoto anticipates the instant claims.

The Examiner refers to Ishida at paragraph [0027]. This paragraph, however, discloses numerous examples of “various types of powders.” Nowhere in paragraph [0027] (nor anywhere else) does Ishida disclose elements “arranged as in” claim 3. Ishida thus does not anticipate claim 3. Similarly, nowhere does Kumamoto disclose elements “arranged as in” claim 3. Kumamoto thus does not anticipate claim 3. Each claim depends either directly or indirectly from claim 3. Thus, because neither of Ishida nor Kumamoto anticipates claim 3, neither reference anticipates the remaining claims.

In short, for at least the reasons set out above, neither Ishida nor Kumamoto discloses the claimed invention. Reconsideration of the claims and withdrawal of all rejections based on Ishida and Kumamoto is requested.

**IV. Conclusion**

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

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